

In the Matter of Kevin Nasatka
DOP Docket No. 2004-226
(Merit System Board, decided October 20, 2004)

Kevin Nasatka appeals his score on the promotional examination for Assistant Engineer in Charge of Maintenance 1 (PS5843I), Department of Corrections.

The subject promotional examination was announced with a closing date of October 21, 2002. The written examination was administered on May 13, 2003, and six applicants passed the examination. In accordance with *N.J.A.C.* 4A:4-2.15, in addition to the score achieved on the written examination, each candidate received credit for his seniority and for the final Performance Assessment Review (PAR) rating on file as of the announced closing date. It is noted that the appellant achieved a score of 72.00 on the written examination, and he was awarded the maximum amount of seniority credit. Department of Personnel (DOP) records reflect, however, that the appellant received no additional points to reflect his final PAR rating as of the closing date. As a result, the appellant ranked fifth on the resultant eligible list with a final score of 77.00. James Caleca, the candidate who ranked first on the eligible list, achieved a final score of 79.50, which includes the maximum amount of seniority credit and an additional three credits to reflect his exceptional PAR rating as of the closing date. A certification of the subject eligible list was issued on June 6, 2003, and Caleca was appointed, effective September 6, 2003.

On appeal to the Merit System Board, the appellant notes that he served provisionally in the title under test from June 2002 through the closing date.¹ The appellant asserts that the examination scores awarded to the candidates do not accurately reflect their qualifications for the title at issue. In this regard, the appellant contends that he has satisfactorily performed the duties of the position, and he “dealt with some very difficult situations concerning staff and work in general” during his provisional service. In addition, the appellant argues that he has no disciplinary record, he does not abuse sick leave, and he has received excellent PAR ratings during his provisional appointment.

It is noted that the appointing authority submitted the appellant’s PAR rating form for the time period of June 15, 2001 through June 14, 2002, which reflects that the appellant received a final PAR rating of “3 – Exceptional” on June 11, 2002.² This form was signed and dated by the appellant and his supervisor.

¹ It is noted that the appellant was returned to his permanent title, Crew Supervisor, Painters, effective September 6, 2003.

² The Division of Selection Services relies on the appointing authority to provide the current PAR ratings of candidates for State promotional examinations for credit in the examination process. While the appointing authority has submitted the appellant’s June 2002 final PAR rating for the Board’s review, there is nothing in the record which would explain the award of zero points for the appellant’s PAR credit. In this regard, the Division of Selection Services has been unable to locate the examination package for this promotional examination, which would contain detailed information regarding the scores awarded to the candidates, and the appointing authority was unable to verify that the appellant’s June 2002 PAR rating was “on file” as of the closing date and correctly reported to the Department of Personnel.

CONCLUSION

N.J.A.C. 4A:4-2.15(c) provides that candidates for State service promotional examinations shall receive credit for the final PAR rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date, and candidates shall receive three points for an "Exceptional" PAR rating, and one point for a "Commendable" PAR rating. *N.J.A.C.* 4A:4-2.15(c)2 provides that, when there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed commendable and credit shall be given for that rating.³

In the instant matter, the appellant achieved a final score of 77.00 on the subject examination. This score reflects his score on the written examination, the maximum amount of seniority credit, and no additional points reflective of the appellant's final PAR rating. However, a review of the appellant's PAR rating for the period of June 15, 2001 through June 14, 2002 reveals that he received a final PAR rating of "3 – Exceptional" for this period. There is no explanation in the record for this discrepancy. However, it is evident that an error was made in the scoring process. Based on the appellant's final PAR rating, he may have been entitled to three additional points for his final PAR rating. *See N.J.A.C.* 4A:4-2.15(c)1. Even if this final PAR rating was not "on file in [his] personnel office as of the announced closing date," the appellant should at least have been awarded one additional point on the examination.⁴ *See N.J.A.C.* 4A:4-2.15(c)2. Thus, it is unclear why the appellant was awarded zero points for his PAR rating, particularly when the examination package is not available for review. In light of the fact that the appellant had earned a final PAR rating of "3 - Exceptional" for the rating period immediately preceding the announced closing date, it would be inherently unfair to him to decline to award him appropriate examination credit for that accomplishment. While the record is not clear as to how the appellant's PAR credit was calculated, due to the unavailability of the examination package, there is sufficient evidence in the record to suggest that his final PAR rating on file as of the closing date was a "3 – Exceptional." Therefore, the Board finds that the appellant's score should be adjusted to reflect a PAR credit of three points, making his final score on the examination 80.00.

In addition, given that the appellant was erroneously awarded zero points for his PAR rating in the initial scoring of the examination, the Board finds that an additional remedy is appropriate. In this regard, *N.J.A.C.* 4A:4-3.8 provides that the Department of Personnel may correct an error at any time during the life of an eligible list, and that

³ It should be noted that, effective October 1, 2003, the Commissioner of the Department of Personnel implemented a revised performance evaluation system (PES) for all employees represented by several unions. *See In the Matter of Performance Evaluation System* (Commissioner of Personnel, decided September 10, 2003). Under PES, a two-tier rating system of satisfactory and unsatisfactory replaced the prior PAR system. Employees receiving a satisfactory and unsatisfactory evaluation will be accorded one and zero points, respectively, in the promotional examination process.

⁴ The Board notes that increasing the appellant's score by one point would not affect his ranking on the subject eligible list. However, an award of three additional points would place the appellant at the head of the list.

corrections of such errors may result in a change in ranking. Based on his adjusted score of 80.00, the appellant should have been ranked first on the subject eligible list at the time it was certified to the appointing authority on June 6, 2003. Therefore, the Board finds that the June 6, 2003 certification should be reissued to the appointing authority, reflecting the appellant's corrected score and ranking. The appointing authority shall then reconsider its disposition of the certification in accordance with the "Rule of Three." *See N.J.A.C. 4A:4-4.8(a)3*. If the appointing authority bypasses the appellant's name when disposing of this corrected certification, then it must present a reason for the bypass. *See N.J.A.C. 4A:4-4.8(b)4* (In disposing of a certification, an appointing authority must, when bypassing a higher ranked eligible, give a statement of the reasons why the appointee was selected instead of a higher ranked eligible). Finally, the Board notes that the only interest which results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990).

ORDER

Therefore, it is ordered that the appellant be awarded three additional points on the promotional examination for Assistant Engineer in Charge of Maintenance 1 (PS5843I), Department of Corrections.

It is further ordered that the June 6, 2003 certification of the eligible list be reissued to the appointing authority to reflect the appellant's adjusted score and rank.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.